FILED
JAN 14 1994

No. 93-817

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

THE BOEING COMPANY,
Petitioner,
v.
UNITED STATES OF AMERICA
ex rel. KEVIN G. KELLY,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF OF THE AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

Pursuant to Rule 37.2 of the Rules of this Court, the Aerospace Industries Association of America ("AIA") hereby respectfully moves for leave to file the attached brief as *amicus curiae* in support of the petition for a writ of certiorari filed by The Boeing Company in this case.*

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* On behalf of the United States, counsel for respondent Kevin G. Kelly has refused to grant written consent for the filing of the attached brief. It is at least ironic that one of the underlying issues in this case is the propriety of a private party's ability to conduct litigation on behalf of the Government, and counsel for respondent has supplanted the Solicitor General's traditional liti-

A principal issue presented by the petition is the constitutionality of lodging litigating authority regarding fraud claims on behalf of the Government in private parties who have suffered absolutely no injury of their own—and allowing that litigation to proceed even without the Government's participation and even after the Government has concluded that no basis exists to support the plaintiff's allegations. Those fraud claims may be pursued against private parties that contract with the Government as well as against recipients of government grants, and thus potentially involve the actions of nearly every governmental department and agency. Even so, many claims, including the claims at issue in this case, have focused upon actions of many of the primary corporations engaged in contract work in the defense and aerospace industries.

The Aerospace Industries Association of America (AIA), with approximately 50 members, represents the nation's principal manufacturers of commercial, military, and business aircraft, missiles, spacecraft, and related components and equipment. All of these companies provide military goods and services under contract with the United States Government.

The member companies of this association now routinely face the threat of litigation brought by private parties pursuant to the provisions of the False Claims Act that are the subject of the petition for certiorari. Even when the Government is satisfied that a member of AIA has performed all of its contractual duties flawlessly, a company may still be subject to expensive and protracted litigation brought by any number of "bounty hunters" who claim no personal injury, but who purport to represent the Government's interests. The decision of the Ninth Circuit for which review is sought provides expansive authority for suits maintained without the par-

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gating role before this Court, and has done so in a way that imposes a burden on this Court that the Solicitor General clearly would have avoided.

ticipation of or control by the Department of Justice and without regard to the evaluation of the contractor's performance by the Government officials overseeing the contract subject to private litigation. *Amicus* therefore wishes to emphasize the importance of the issue for which petitioner seeks review and the conflict between the Ninth Circuit's decision and fundamental constitutional principles set forth in decisions by this Court.

In addition, *amicus* wishes to emphasize and describe the distorting and detrimental effects that the type of suits at issue in this case have upon the government contracting process, particularly for contracts entered into by *amicus's* members and designed to further the nation's defense capabilities and national security. The "cash bounty" provisions of the 1986 Amendments to the False Claims Act have subjected *amicus's* members to an onslaught of frivolous litigation, and the enormous resources that must be devoted to those suits will, inevitably, be reflected in reduced resources available to produce the finest defense products and in higher costs to the Government and American public for the products that are manufactured.

As Government officials have indicated, and as *amicus* can confirm, a stable and productive relationship between the Government and suppliers of defense products requires that the Government—rather than private parties and Article III courts—retain the ability to determine whether breaches of contract, including fraudulent breaches, have occurred and to initiate, maintain, and terminate litigation where appropriate. The underlying constitutional issues in this case concern precisely whether this control will be lodged in the Government or in private parties who have suffered absolutely no injury and have no particular interest in the government contract at issue.

Amicus is thus uniquely able to present this Court with information regarding the potential effect of the suits

at issue upon the defense contracting process, and to situate the legal issues in this case in a broader social and economic context. Accordingly, AIA respectfully requests that the Court grant AIA leave to file the accompanying brief as *amicus curiae*.

Respectfully submitted,

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January 14, 1994

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QUESTION PRESENTED

Whether the Constitution permits Congress to authorize private citizens who have suffered no injury to litigate civil fraud claims on behalf of the United States.

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BRIEF OF THE AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

The interest of *amicus curiae* is set forth in the accompanying motion for leave to file this brief.

REASONS FOR GRANTING THE PETITION

In this case, the Ninth Circuit upheld the ability of a private citizen who has suffered no injury of his own to invoke an Article III court's jurisdiction to adjudicate a claim that purports to rest upon injury to the Government alone—all without the authorization or participation of the Department of Justice or any other Executive

official. The Ninth Circuit's reasoning presents and condones the most extreme version of the conflict between the controversial 1986 amendments to the *qui tam* provisions of the False Claims Act and traditional standing, separation of powers, and related doctrines. Although both theorists and litigators have questioned the constitutionality of adjudication of *qui tam* suits even when the government endorses and intervenes in the private party's suit, the constitutional conflict is most clear when, as in this case, a private party is permitted to proceed without the control or approval of the Executive.

For this reason, this case is a particularly compelling vehicle by which to resolve an issue of fundamental constitutional principle and dramatic public importance created by two contradictory developments of the past decades. On the one hand, the 1986 Amendments to the False Claims Act revived moribund statutory provisions in a manner that created an onslaught of private relator cases that may now arise from the routine contractual dealings of nearly every governmental department or agency. The potential for such suits, particularly when the Government declines to intervene, dramatically impairs the dealings between the Government and those who do business with it. On the other hand, this Court over the past two decades has elaborated the requirements imposed by the Constitution's Appointments Clause, the Constitution's separation of powers into three distinct Branches, and Article III's standing requirements in ways that are wholly at odds with the *qui tam* procedure as developed in 1986. This Court should review whether those requirements in fact preclude this recent burst of *qui tam* litigation before additional expense and burden are imposed on those who do business with the federal government.

1. Review is warranted because this suit, and the hundreds of suits like it, can be maintained only in contravention of "the core component of [Article III] standing"

that "the plaintiff must have suffered an 'injury in fact'—an invasion of a legally-protected interest which is (a) concrete and particularized and . . . (b) actual or imminent, not conjectural or hypothetical." *Lujan* v. *Defenders of Wildlife,* 112 S. Ct. 2130, 2136 (1992) (internal quotations and citations omitted); see also, *e.g., Whitmore* v. *Arkansas,* 495 U.S. 149, 155 (1990); *Allen* v. *Wright,* 468 U.S. 737, 751 (1984); *Simon* v. *Eastern Ky. Welfare Rights Org.,* 426 U.S. 26, 41-42 (1976); *Warth* v. *Seldin,* 422 U.S. 490, 508 (1975).

The Ninth Circuit held that the plaintiff in this case could proceed even if he suffered absolutely no injury of any kind to himself and asserted none as the basis of his claim. Permitting such unauthorized private plaintiffs in *qui tam* suits to invoke the district court's jurisdiction violates each element of this "injury in fact" requirement and related Article III standing requirements. The first element absent in these cases is that "[a] plaintiff must *always* have suffered a 'distinct and palpable injury to himself'. . . that is likely to be redressed if the requested relief is granted." *Gladstone* v. *Village of Bellwood,* 441 U.S. 91, 100 (1979) (citation omitted) (emphasis added); see *Lujan,* 112 S. Ct. at 2145; *Warth* v. *Seldin,* 422 U.S. at 500-01.[1] This is an irreducible minimum requirement that simply cannot be displaced by legislative fiat.

Second, fraud against the government cannot serve as a sufficient interest to permit a private plaintiff to invoke Article III because the interest must be particularized rather than generally shared. "By particularized, we mean that the injury must affect the plaintiff in a personal and individual way." *Lujan,* 112 S. Ct. at 2136 n.1; see also

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[1] *Jus tertii* or "third party" standing doctrines are consistent with this principle. Those doctrines allow a plaintiff to challenge an action on the grounds that it infringes the rights of others, but only if the challenged action *also* injures the plaintiff. *See, e.g., Craig* v. *Boren,* 429 U.S. 190, 192-97 (1976).

United States v. *Richardson,* 418 U.S. 166, 176-77 (1974); *Frothingham* v. *Mellon,* 262 U.S. 447 (1923).

Third, the plaintiff's standing in private relator cases is insufficient because the requisite Article III injury must be "fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen* v. *Wright,* 468 U.S. at 751; see also *Whitmore* v. *Arkansas,* 495 U.S. at 155; *Valley Forge Christian College* v. *Americans United for Separation of Church & State,* 454 U.S. 464, 471 (1982). If the plaintiff in this case possesses standing, then any and all "concerned bystanders" could be authorized to bring lawsuits protesting alleged harms to others who do not consider themselves aggrieved. *United States* v. *Students Challenging Regulatory Agency Procedures (SCRAP),* 412 U.S. 669, 687 (1973); see *Diamond* v. *Charles,* 476 U.S. 54 (1986) (physician lacked standing to defend a state law restricting abortion when the State had not invoked the Court's jurisdiction).

The possibility of gaining damages through suit is clearly insufficient injury or interest for Article III purposes. "Damages" in *qui tam* cases are merely a windfall or reward, and no "injury" exists to be remedied. See *Diamond* v. *Charles,* 476 U.S. at 70-71 ("Art. III standing requires an injury with a nexus to the substantive character of the statute or regulation at issue," not merely "a byproduct of the suit itself").[2] Although "Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy

[2] *Lujan* noted that the Court was not addressing whether Congress could "creat[e] a concrete private interest in the outcome of a suit . . . by providing a cash bounty for the victorious plaintiff," and the decision in the next sentence reaffirms that Article III is not satisfied "by congressional conferral upon *all* persons of an abstract, self-contained, non-instrumental 'right.'" *Lujan* v. *Defenders of Wildlife,* 112 S. Ct. 2130, 2143 (1992) (emphasis in original). This reference does not suggest that Congress could avoid Article III's causation and redressability requirements.

. . . , [it] must at the very least identify the injury it seeks to vindicate and relate the injury to the class of persons entitled to bring suit." *Lujan,* 112 S. Ct. at 2146-47 (Kennedy, J., concurring). Here, there is no sense in which the plaintiff has been injured, and the False Claims Act entitles nearly *all* citizens to bring suits, without regard to whether they are injured.

2. The Ninth Circuit's attempt to circumvent the obvious standing difficulties in this case—the panel's theory that the Government had in some sense assigned *its* injury or claim to the plaintiff, see Pet. App. 46a-47a—not only fails to avoid the standing issue, but creates a conflict with the Constitution's Appointments Clause and related separation of powers doctrines that warrants this Court's review.

a. Initially, as a response to standing objections, the Ninth Circuit's theory is a complete *non sequitur.* Even if some assignment could be imputed on the facts of this case, and even if the *Government* could assign its interest to a private party, and even if such assignments could somehow transfer Article III "injury," the assignment the Ninth Circuit imagines would not satisfy the particularity requirement of Article III. See *supra* p. 3. Even under the Ninth Circuit's theory, the "assignment" is open to any and every citizen, enabling any one of them to file the suit plaintiff initiated. Of course, this is precisely the "generalized grievance" that is insufficient to meet Article III's requirements because "the impact on [plaintiff] is plainly undifferentiated and common to all members of the public." *United States* v. *Richardson,* 418 U.S. at 171, 176-77; see also, *e.g., Allen* v. *Wright,* 468 U.S. at 754; *Valley Forge Christian College,* 454 U.S. at 483.

In fact, the Ninth Circuit's posited "assignment" is entirely fictional, and poor fiction at that. The panel points to nothing that indicates any intent to assign the claim underlying this suit, or even to any governmental

dealings with the plaintiff that could be so construed, and indeed nothing suggests the Government even believed that any such claim existed. To the contrary, following a 40-month investigation including review of more than 400,000 pages of documents, the Government found no basis to intervene in this suit. In the view of the Ninth Circuit, an imagined claim, transferred without formality to a plaintiff barely known to government officials, establishes an "assignment" sufficient to meet the plaintiff's burden of establishing Article III standing. Given the importance of the controversy to the nation's federal contractors, this is a slender reed on which to sustain this radical departure from core Article III requirements.

b. The Ninth Circuit's "assignment" theory encounters more profound jurisprudential difficulties, foremost among them a direct conflict with the Constitution's Appointments Clause, art. II, § 2, cl. 2. According to the Ninth Circuit, a private citizen is entitled to conduct litigation on behalf of the United States. However, this Court has clearly indicated that only "Officers of the United States" may undertake such actions.[3] In *Buckley* v. *Valeo,* 424 U.S. 1 (1976), this Court held that Congress—which itself lacked the power "to enforce [the law] or appoint the agents charged with the duty of such enforcement," *id.* at 139 (internal quotation omitted) —could not bestow enforcement powers on the Federal Election Commission, an agency outside the Executive Branch:

> We hold that these provisions of the Act, vesting in the Commission primary responsibility for conduct-

[3] Art. II, § 2, cl. 2 provides:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

> ing civil litigation in the courts of the United States for vindicating public rights, violate Art. II, § 2, cl. 2 of the Constitution. *Such functions may be discharged only by persons who are "Officers of the United States" within the language of that section.*

Id. at 140 (emphasis added). Private citizens asserting the Government's rights, such as the plaintiff in this case, are not officers of any sort. Nor, as here, when the Government declines to intervene in a False Claims Act suit, are they controlled by duly appointed officers. Thus, the Appointments Clause as interpreted in *Buckley* bars them from conducting civil litigation in the name of and on the behalf of the United States Government.

The Ninth Circuit presented only policy reasons for avoiding this constitutional command. The court below acknowledged that when the Government declines to participate in *qui tam* litigation and thus the private citizen "retains primary responsibility for the litigation," there "may seem [to be] a close question under *Buckley*." Pet. App. 69a. The court remained untroubled, however, because "the relator's responsibility only extends to a single case" and thus could not amount to "unchecked or unbalanced government power." *Id.* A defendant subject to such a suit could hardly be expected to agree, but in any event, the court's reasoning adopts the wholly unacceptable rationale that constitutional violations are permissible so long as they are "small." [4]

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[4] The court below also relied on the fact that Congress had not aggrandized its powers and that *qui tam* relators were not "officers" because they received no salary and served for no specified term. Pet. App. 69a-70a & n.23. This latter rationale merely restates the issue, and confirms that no Executive officer controls the private plaintiff. And even if the policy of limiting Congressional aggrandizement rather than creating a unified Executive were relevant to interpreting the Appointments Clause, the 1986 Amendments to the False Claims Act reflect *Congress'* effort to limit the Executive's power.

c. In a similarly blithe fashion, the court below disregarded this Court's separation of powers pronouncements regarding the constitutional requisites of both the Executive's powers and the federal Judiciary's. It has long been settled that law enforcement is an "executive function[]." *Springer* v. *Philippine Islands,* 277 U.S. 189, 202 (1928). "A lawsuit is the ultimate remedy for a breach of the law, and it is to the President . . . that the Constitution entrusts the responsibility to 'take Care that the Laws be faithfully executed.' " *Buckley* v. *Valeo,* 424 U.S. at 138 (quoting U.S. Const. art. II, § 3); see *Bowsher* v. *Synar,* 478 U.S. 714, 726 (1986).

The False Claims Act unconstitutionally limits this core Executive function at each stage of litigation. The power "not to prosecute or enforce" is at the core of the Executive's constitutional duty to "take Care that the Laws be faithfully executed," *Heckler* v. *Chaney,* 470 U.S. 821, 831-32 (1985) (quotation omitted), in large measure because the crafting of prosecutorial policy is crucial to shaping the administration of the substantive legislative command. In this and related cases, the Executive's prosecutorial policy also is inextricably intertwined with the ongoing contractual relations with literally thousands of government contractors. Even so, neither the Attorney General nor any contracting official has any control over the commencement of *qui tam* litigation brought in the name of the United States. This interference with the Executive's role is particularly severe when, as in this case, the Executive has declined to undertake litigation after extensive investigation of the allegations that underlie the private plaintiff's claim.

In addition, the Act dramatically limits the Executive's ability to conduct litigation. The private plaintiff acting on its own behalf is permitted to conduct discovery in the Government's name, responds to requests for admissions on the Government's behalf, and may bar subsequent governmental actions through the operation of *res*

judicata.[5] Even when the Government intervenes in an ongoing *qui tam* suit, the statute severely limits its ability to control the litigation. See 31 U.S.C. § 3730(c). The Act's limitations upon the Government's ability to settle a *qui tam* case are similarly restrictive. Just as a decision "not to prosecute or enforce" is "generally committed to an agency's absolute discretion," *Heckler* v. *Chaney*, 470 U.S. at 831, so, too, is the decision to settle a case. *Cf. Maryland* v. *United States*, 460 U.S. 1001, 1004 (1983) (Rehnquist, J., joined by Burger, C.J., and White, J., dissenting from summary affirmance). Even so, the Act constricts the Government's ability to limit the private relator's participation in the suit even when the Government intervenes, see 31 U.S.C. § 3730(c)(2)(C), and the Government may settle litigation only, after a hearing, once the *court* determines "that the proposed settlement is fair, adequate, and reasonable." *Id.* at § 3730(c)(2)(B).[6]

The False Claims Act's distortion of the judicial role mandated by Article III is equally severe. The Act requires the district court to make determinations (such as

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[5] The legislative history of the 1986 Amendments to the False Claims Act confirms that the Government would be bound by judgments secured by private plaintiffs conducting *qui tam* litigation without the Government's participation. *See* S. Rep. No. 345, 99th Cong., 2d Sess. 27 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5292.

[6] In at least one case, the court has withheld consent. The relator in *Gravitt* v. *General Elec. Co.*, 680 F. Supp. 1162 (S.D. Ohio), *app. dismissed*, 848 F.2d 190 (6th Cir.), *cert. denied*, 488 U.S. 901 (1988), blocked a settlement that the Justice Department had concluded was in the Government's interest. As a result, the Government and the defendant became embroiled in several years of bizarre and unseemly litigation—with the case proceeding under the direction of the *qui tam* plaintiff, who purported to represent the United States even though (a) the Justice Department participated in the case and (b) the plaintiff and Government took conflicting positions on issue after issue, including whether the suit should proceed at all.

whether a settlement proposal is "fair, adequate, and reasonable," *id.*) without providing any *legal* standard for the court to apply. Article III prohibits this vesting in the judiciary of these quintessentially administrative or "public interest" determinations. See *Maryland* v. *United States*, 460 U.S. at 1004 (Rehnquist, J., joined by Burger, C.J., and White, J., dissenting from summary affirmance) (citing sources). Congress has more generally conscripted the federal courts into performing administrative investigative and review functions regarding claims of potential fraud against the Government. The False Claims Act provides that parallel administrative proceedings must allow "the same rights in such proceeding" as in a judicial action and may address identical claims of fraud, as well as "determine a civil money penalty." 31 U.S.C. § 3730(c)(5). Findings of fact and law in such administrative proceedings are binding upon the same parties in actions in district courts. *Id.* The principal difference between the administrative and judicial proceedings is that Article III courts must be open for business to consider allegations by any citizen who chooses to seek the "bounty" held out by the Act.

3. This petition presents an issue of great social and economic importance as well as issues of the most fundamental constitutional import. The scope of the Act is breathtaking, and extends to every agency and cabinet department contractual undertaking with private parties. It also encompasses all governmental grants of aid. The Act thus directly interferes with "every aspect of the Government's work that can be implicated in suit under the False Claims Act. Any Government contract can give rise to a False Claims action. For that reason, every routine decision that an agency makes as a contracting party is now subject to the relator's influence." *Constitutionality of the Qui Tam Provisions of the False Claims*

Act, 13 Op. Off. Legal Counsel 249, 263 (1989) (Assistant Att'y Gen. William P. Barr) (finding Act's provisions unconstitutional). Although many suits have arisen initially in the defense industry, every governmental sector will be subject to the Act as the plaintiffs' *qui tam* bar expands in numbers and interests. And as the Government increasingly uses the contracting process in novel areas, such as health care and welfare reform, the number and significance of *qui tam* suits will increase correspondingly.

The potential for being subject to *qui tam* suits even where, as in this case, the Government has determined that no fraud has occurred, tremendously distorts the governmental contracting process. For government contractors, that threat of suit inherently increases the risk of admitting and rectifying any errors in a contract's performance, because a private plaintiff (even a contractor's own employee) could transform that change in conduct into a baseless but costly *qui tam* suit. Indeed, that potential liability will serve as an additional basis for deterring many of the nation's finest corporations from engaging in work, or in accepting additional work, for the federal government. Certainly the increased costs associated with the litigation will in part be passed on through higher prices, which will most directly affect the federal government.

The potential for suit by private relators correspondingly distorts and disrupts the government's role in the contracting process:

> Any complex contract naturally will produce issues of construction between the parties. In the case of Government contracts, the agency concerned must decide whether contract deviations constitute a breach, and sometimes whether a breach amounts to fraud. In making these decisions, it is frequently in the Government's interest, as it would be in the interest of any contracting party, to avoid excessive

> concern over minor failings that might threaten a useful course of dealing with the other party. In the Government's case, especially, the agency must carefully consider such matters where the contract involves important military or national security matters, particularly if there are a limited number of qualified contractors, or the contractor's performance otherwise has been adequate or even excellent.

Constitutionality of the Qui Tam Provisions of the False Claims Act, supra, at 263-64. In addition, the Contracts Dispute Act ("CDA") provides for the comprehensive resolution of governmental contract disputes and employs the expert U.S. Claims Court, but a mere allegation of fraud through a *qui tam* action disrupts and defeats this scheme by taking advantage of an exception in the CDA and thus vesting jurisdiction instead in any district court to resolve all related contractual claims. See 41 U.S.C. § 605(a); *United States* v. *Rockwell Int'l Corp.,* 795 F. Supp. 1131 (N.D. Ga. 1992) (and cases cited); *Litton Sys., Inc.* v. *United States,* 27 Fed. Cl. 306 (1992).

The harms created by private relator *qui tam* suits where the Government chooses not to intervene might be less severe if offset by corresponding benefits, but those benefits have not emerged. Indeed, the vast majority of private relator suits have proved to be strike suits designed to employ the judicial process to conduct a "fishing expedition." Even though the Government stands to benefit financially from *meritorious* private relator suits, it has credited empirical evidence demonstrating both the lack of utility and burden of such private suits:

> An uncomfortable number of the *qui tam* suits filed present no evidence, no information based on personal knowledge, or are 'kitchen sink' complaints, containing every conceivable broad allegation without any specific evidence whatsoever. . . . Because so many meritless *qui tams* are filed, at least one large Inspector General's office has warned us that it may have to decline to investigate certain *qui tam* suits.

> . . . Moreover, in cases where the Department has declined to pursue the matter, . . . private lawyers have contributed just .001% of the total *qui tam* recoveries to the government in the last six years, and .0002% of the total fraud recoveries.

False Claims Act Technical Amendments of 1992: Hearings on H.R. 4563 Before the Subcommittee on Administrative Law and Governmental Relations of the House Committee on the Judiciary, 102d Cong., 2d Sess. 24, 26 (1992) (statement of Stuart M. Gerson, Assistant Att'y Gen., Civil Div., U.S. Dep't of Justice). The Department has further quantified the exceptionally limited benefit of private relator suits, especially in relation to the enormous cost of litigating such suits:

> [O]nly a relatively small dollar amount of the total *qui tam* recoveries ($8.6 million out of approximately $400 million) have occurred in cases where the government did not handle the action but allowed the relator to litigate it. Of the 335 cases where the government has affirmatively declined to proceed, relators have obtained recoveries for the government in only 16 cases. The average government recovery on behalf of the United States in *qui tam* suits is over $6 million; the average relator recovery in cases we decline is about $39,000.

Letter from Frank W. Hunger, Assistant Att'y Gen., Civil Div., U.S. Dep't of Justice, to Sen. Howell Heflin of Sept. 2, 1993, at 3. Assuming conservatively that the cost of defending these cases is approximately $100,000 per case, the defense industry, which is suffering from significant financial problems, spends almost three times more in each *qui tam* case than the Government realistically can expect to receive.

Although such systemic failures of the *qui tam* process and the tremendous social cost imposed by private relator suits might not independently merit this Court's attention, those failures arising out of unquestion-

ably significant constitutional issues presented by the petition in this case do justify certiorari in this case.

CONCLUSION

For the foregoing reasons and those presented in the petition for certiorari, the petition should be granted.

Respectfully submitted,

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January 14, 1994

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